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EXAMINER

GREENE, DANIEL L

ART UNIT	PAPER NUMBER
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3621

DATE MAILED: 11/18/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/882,758

Applicant(s)

BABBITT ET AL.

Examiner

Daniel L. Greene

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 September 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-76 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-75 is/are rejected.
- 7) ☒ Claim(s) 76 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

DETAILED ACTION

Double Patenting

1. A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101, which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

Claims 1-76 are provisionally rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 1-76 of copending Application No. 09/753769. This is a provisional double patenting rejection since the conflicting claims have not in fact been patented.

Response to Arguments

2. Applicant's arguments filed 9/22/03 have been fully considered but they are not persuasive.

3. The Applicant submits that the prior art cited does not teach "voter authentication code is configured to authenticate a voter for voting on a personal computer without requiring a server to assist in authenticating an individual voter while the display code is present on the personal computer". The Applicant further states that the prior art teaches only that following authentication, the ballot is encrypted and

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transmitted to the voter's computer. There is no further authentication until the completed ballot arrives back at the journal server. The Examiner disagrees.

A reference is to be considered not only for what it expressly states, but also for what it would reasonably have suggested to one of ordinary skill in the art. *In re DeLisle*, 160 USPQ 806 (CCPA 1969). Challenger teaches utilizing said authentication server to issue a blank ballot to said voter in the form of an encrypted electronic communication. Challenger does not address the decrypting of the electronic communication but does show that the ballot contains at least the voter's private key, and voter ID.

Challenger teaches all of the elements claimed with the exception of decrypting of the electronic communication but does show that the ballot contains at least the voter's private key, and voter ID.

The examiner takes Official Notice that the voter must, by design, authenticate themselves on their own computer by providing the key necessary to decrypt the encrypted communication. It would have been obvious to one having ordinary skill in the art at the time of the invention to have included the step of authenticating the voter/recipient of the encrypted communication by requiring them to provide the key to decrypt the communication after it appeared on their screen because the skilled artisan would have recognized that this business practice of requiring recipient authentication before a document is opened is well known and is clearly applicable to the present application.

7.34.01 Rejection, 35 U.S.C. 112, 2nd Paragraph, Failure To Particularly Point out and Distinctly Claim (Indefinite)

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Claim 6 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

¶ 7.34.02 Terminology Used Inconsistent with Accepted Meaning

Where applicant acts as his or her own lexicographer to specifically define a term of a claim contrary to its ordinary meaning, the written description must clearly redefine the claim term and set forth the uncommon definition so as to put one reasonably skilled in the art on notice that the applicant intended to so redefine that claim term. *Process Control Corp. v. HydReclaim Corp.*, 190 F.3d 1350, 1357, 52 USPQ2d 1029, 1033 (Fed. Cir. 1999). The term “[hash]” in claim [6] is used by the claim to mean “[breakup of storage locations to position them in different locations, i.e., the information is cut apart and stored separately in different locations]” (Applicant statement, pg. 17, 1st Para.), while the accepted meaning is “ A cryptographic term for a small mathematical summary or digest of an original clear-text data file or message. ” The term is indefinite because the specification does not clearly redefine the term.

In regards to the applicant's arguments on claim 7 rejection, a reference is to be considered not only for what it expressly states, but also for what it would reasonably have suggested to one of ordinary skill in the art. *In re DeLisle*, 160 USPQ 806 (CCPA 1969)

Challenger teaches about a ballot being provided to the voter. A ballot provides the voter with the choices of issues to be decided at the time of the voting. As an example, McClure shows examples of electronic ballots. Fig. 13. It would have been

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obvious to a person having ordinary skill in the art at the time of the invention to provide an electronic ballot with at least the same information as a paper ballot As per the Examiner's Note, Examiner's Note: Examiner has cited particular columns and line numbers in the references as applied to the claims below for the convenience of the applicant. Although the specified citations are representative of the teachings in the art and are applied to the specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested from the applicant, in preparing the responses, to fully consider the references in entirety as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the examiner.

In reference to the art being silent on the limitation of claim 9 being a virus protection measure the Examiner agrees since claim 9 is also silent on the limitation being a virus protection measure.

In reference to claim 13, the Applicant asserts that because the columns and lines pointed out by the Examiner does not apply, the limitation is not taught by the prior art. As per the Examiner's Note, the Examiner has cited particular columns and line numbers in the references as applied to the claims below for the convenience of the applicant. Although the specified citations are representative of the teachings in the art and are applied to the specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested from the applicant, in preparing the responses, to fully consider the references in entirety as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the

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prior art or disclosed by the examiner. As previously discussed, the computer readable form is downloadable from a server.

In reference to arguments pertaining to claims 18 and 19, one cannot show non-obviousness by attacking the references individually where the rejection is based on a combination of references. *In re Young*, 159 USPQ 725 (CCPA 1968). Challenger in combination with the Symantec article as specified in the Office Action addresses the limitations of the claims.

In reference to utilizing e-mail for delivering ballots as per claims 21 and 49, the Examiner takes Official Notice that delivering documents to recipients via email attachments is well known and not a unique or original practice. It would have been obvious to one having ordinary skill in the art at the time of the invention to have included the step of utilizing email to deliver ballots because the skilled artisan would have recognized that this business practice of using emails to deliver documents provides for a more efficient mode of delivery and is clearly applicable to the distribution of ballots. These advantages are well known to those skilled in the art.

In reference to claims 24 and 52, charging a transactional fee. The examiner takes Official Notice that charging a transactional fee is well known for providing a service over the Internet.. It would have been obvious to one having ordinary skill in the art at the time of the invention to have included the step of charging a transactional fee because the skilled artisan would have recognized that this business practice of charging a transactional fee can offset the cost of providing the service and is clearly

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applicable to providing an electronic ballot service. These advantages are well known to those skilled in the art.

In reference to claims 25 and 53 the applicant asserts that using the United States Postal Service is an original and unique way to disseminate documents. The applicant further teaches about the use of USPS POSTeCS as if it is obvious and well known in the art. Therefore, based upon the applicants assertion, incorporation of an obvious and well-known method into their application does in itself does not render it patentable.

In reference to claim 76, PTO's guide lines for examining claimed language require: the examiner must make a determination, whether the claimed invention "as a whole" would have been obvious at the time of the invention to one of ordinary skill in the art. See MPEP 2142. In these pending claims, the examiner submits that Willard teaches about batch control processing of electronic information as directed by a server. In the pending claim, the examiner submits that the particular language does not serve as a limitation on the claim (i.e., "ballot and election".

Response to Amendment

The amendment filed 9/22/03 is objected to less than 35 U.S.C. 132 because it introduces new matter into the disclosure. 35 U.S.C. 132 states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: wherein the interface for batch control processing includes program logic for creating and delivering electronic

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messages to prospective voters, the electronic messages each being configured to facilitate a download of an electronic ballot for use by an individual voter. Applicant is required to cancel the new matter in the reply to this Office Action.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-75 are rejected under 35 U.S.C. 103(a) as being unpatentable over Challenger et al. U.S. 6,081,793 [Challener '793], McClure et al. U.S. 6,250,548B1 [McClure '548] and further in view of SYMANTEC AntiVirus Research Center, Computer Viruses – An Executive Brief@ 1998 Symantec Corporation.

As per claim 1.

Challener '793 discloses:

voter authentication code; Col. 3, lines 9-25.

message transmission code for use in transmitting the cast vote record to the server, Col. 8, lines 9-20.

wherein the voter authentication code is configured to authenticate a voter for voting on a personal computer without requiring a server to assist in authenticating an individual voter while the display code is present on the personal computer. Col. 8, lines 5-15.

Challener '793 discloses the claimed invention except for the specific detail of the display code configured for use in displaying the official ballot image to the voter while permitting the voter to create a cast vote record by interaction with the ballot image until such time as the voter casts the ballot. Challener '793 does disclose sending an encrypted ballot to the voter's personal computer and the voter completing the ballot. Col. 8, lines 5-12. McClure '548 teaches that it is known in the art to provide a display code configured for use in displaying the official ballot image to the voter while permitting the voter to create a cast vote record by interaction with the ballot image until such time as the voter casts the ballot. Col. 37, lines 1-30. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the the encrypted ballot of Challener '793 with the display code configured for use in displaying the official ballot image to the voter while permitting the voter to create a cast vote record by interaction with the ballot image until such time as the voter casts the ballot of McClure '548, in order to clarify the method of presenting the ballot to the voter.

A reference is to be considered not only for what it expressly states, but also for what it would reasonably have suggested to one of ordinary skill in the art. *In re DeLisle*,

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160 USPQ 806 (CCPA 1969). Challenger teaches utilizing said authentication server to issue a blank ballot to said voter in the form of an encrypted electronic communication. Challenger does not address the decrypting of the electronic communication but does show that the ballot contains at least the voter's private key, and voter ID.

Challenger teaches all of the elements claimed with the exception of decrypting of the electronic communication but does show that the ballot contains at least the voter's private key, and voter ID.

The examiner takes Official Notice that the voter must, by design, authenticate themselves on their own computer by providing the key necessary to decrypt the encrypted communication. It would have been obvious to one having ordinary skill in the art at the time of the invention to have included the step of authenticating the voter/recipient of the encrypted communication by requiring them to provide the key to decrypt the communication after it appeared on their screen because the skilled artisan would have recognized that this business practice of requiring recipient authentication before a document is opened is well known and is clearly applicable to the present application.

As per claim 2.

Challener '793 further discloses:

wherein the voter authentication code includes code for comparing official voter authentication data against data that is input by the voter. Col. 7, lines 38-65.

As per claim 3.

Challener '793 further discloses:

wherein the voter authentication code includes code for comparing an official password against a password that is provided by the voter. Col. 7, lines 38-55.

As per claim 4.

Challener '793 discloses the claimed invention except for wherein the voter authentication code includes code for accessing a biometric authentication device. However, Challener '793 teaches about qualifying a voter and the use of a "smart card" for future verification of the voter.

McClure '548 teaches that it is known in the art to utilize biometrics for the verification of a voter. It would have been obvious to one having ordinary skill in the art at the time the invention was made to substitute the smart card of Challener '793 with the biometrics of McClure '548, in order to provide another method for identifying the voter.

As per claim 5.

Challener '793 further discloses:

wherein the voter authentication code includes code for accessing a device in the possession of the voter, the device being selected from the group consisting of a smart card . Col. 3, lines 1-10. Challener '793 discloses the claimed invention, as discussed above, except for the additional devices consisting of an optical storage device, and a magnetic storage device.

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It would have been an obvious matter of design choice to modify the teachings of Challenger '793, to provide the additional devices consisting of an optical storage device, and a magnetic storage device. Since the applicant has not disclosed that the additional devices consisting of an optical storage device, and a magnetic storage device solves any stated problem in a new or unexpected way or is for any particular purpose which is unobvious to one of ordinary skill and it appears that the claimed feature does not distinguish the invention over similar features in the prior art since, the teachings of Challenger '793 will perform the invention as claimed by the applicant with any means, method, or product to authenticate the voter.

As per claim 6.

Challenger '793 further discloses:

wherein the voter authentication code includes code for comparing hashed authentication data against voter input data. Col. 3, 65-67, Col. 4, lines 1-10.

As per claim 7.

Challenger '793 further discloses including data for the official ballot image presenting the voter with all choices as they would appear on an absentee paper ballot that the voter would receive in an election. Col. 7, lines 38-67, Col. 8, lines 1-20.

As per claim 8.

Challener '793 further discloses:

The computer readable form includes data comprising the official ballot image, which is accessible to the display code to present the voter with a ballot consisting of contests in which the voter is authorized to vote. Col. 3, lines 38-45, Col. 7, lines 38-67, Col. 8, lines 1-20.

As per claim 9.

Challener '793 further discloses:

comprising code for checking video memory for ballot selections that are displayed to the voter against other memory containing ballot choices that the voter has made. Col. 10, lines 65-67, Col. 11, lines 1-5.

As per claim 10.

Challener '793 further discloses:

wherein the message transmission code includes code for encrypting the cast vote record prior to transmission. Col. 10, lines 5-35.

As per claim 11.

Challener '793 further discloses:

wherein the message transmission includes code for implementing a secure transmission protocol in transmitting the cast vote record to an election server. Col. 10, lines 5-35.

As per claim 12.

Challener '793 further discloses:

wherein the computer readable form is stored on a disk. Col. 4, lines 30-67.

As per claim 13.

Challener '793 further discloses:

wherein the computer readable form is configured for download from a server.
Col. 5, lines 5-67.

As per claim 14.

Challener '793 further discloses:

wherein the message transmission code includes code for encrypting the cast vote record prior to transmission through use of an encryption key. Col. 4, lines 1-15.

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As per claim 15.

Challener '793 discloses the claimed invention except for the including code for deleting the computer readable form once the code for encrypting and the message transmission code have completed their tasks.

McClure '548 teaches that it is known in the art to include code for deleting the computer readable form once the code for encrypting and the message transmission code have completed their tasks. Col. 37, lines 35-40.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate into Challener '793 system a code for deleting the computer readable form once the code for encrypting and the message transmission code have completed their tasks as taught by McClure '548, in order to clear the voter's system of the operating program.

As per claim 16.

Challener '793 further discloses:

wherein the computer readable form is packaged as an object including all data that is required for voter authentication. Col. 3, lines 1-67.

As per claim 17.

Challener '793 further discloses:

wherein the computer readable form is packaged as an object including all data that is required for the voter to create a cast vote record. Col. 7, lines 38-67, Col 8, lines 1-55.

As per claim 18.

Challener '793 discloses the claimed invention, as discussed above, except for the step of including code for implementing a virus mitigation measure.

It would have been an obvious matter of design choice to modify the teachings of Challener '793 to provide the step of including code for implementing a virus mitigation measure. As pointed out by the article of SYMANTEC, AntiVirus Research Center, Computer Viruses – An Executive Brief, @1998 Symantec Corporation the use of anti-virus programs is well known in the art and would have been obvious to a person in the art at the time the invention was made incorporate a virus mitigation program into their program to prevent a virus from destroying or shutting their system down. However, in the defense of Challener '793 not utilizing an anti-virus program to complement his security measures could be because of the specific nature and hashing of the data that does not lend itself to the addition of virus programs..

Since the applicant has not disclosed that including code for implementing a virus mitigation measure solves any stated problem in a new or unexpected way or is for any particular purpose which is unobvious to one of ordinary skill and it appears that the claimed feature does not distinguish the invention over similar features in the prior art since, the teachings of Challener '793 will perform the invention as claimed by the applicant.

As per claim 19.

Challener '793 discloses the claimed invention, as discussed above, except for wherein the virus mitigation measure is selected from the group consisting of compiled sections of executable code with a plurality of static functions in different order, the insertion of junk functions into executable code, an absence of text tags to system function calls, serialized executable file names, serialized data file headers, virus checking upon execution of the computer readable form for viruses that are known to interact with the computer readable form, and means for comparing video memory to the ballot image that is displayed to the voter.

It would have been an obvious matter of design choice to modify the teachings of Challener '793 to provide the step of wherein the virus mitigation measure is selected from the group consisting of compiled sections of executable code with a plurality of static functions in different order, the insertion of junk functions into executable code, an absence of text tags to system function calls, serialized executable file names, serialized data file headers, virus checking upon execution of the computer readable form for viruses that are known to interact with the computer readable form, and means for comparing video memory to the ballot image that is displayed to the voter.

As pointed out by the article of SYMANTEC, AntiVirus Research Center, Computer Viruses – An Executive Brief, @1998 Symantec Corporation, pgs. 9-12, generic type viruses are well known with methods to prevent and/or remove them.

Therefore, various anti-virus programs are available and well known in the art and would have been obvious to a person in the art at the time the invention was made incorporate wherein the virus mitigation measure is selected from the group consisting

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of compiled sections of executable code with a plurality of static functions in different order, the insertion of junk functions into executable code, an absence of text tags to system function calls, serialized executable file names, serialized data file headers, virus checking upon execution of the computer readable form for viruses that are known to interact with the computer readable form, and means for comparing video memory to the ballot image that is displayed to the voter.

Since the applicant has not disclosed that including code for implementing a virus mitigation measure solves any stated problem in a new or unexpected way or is for any particular purpose which is unobvious to one of ordinary skill and it appears that the claimed feature does not distinguish the invention over similar features in the prior art since, the teachings of Challenger '793 will perform the invention as claimed with any means, method or product to wherein the virus mitigation measure is selected from the group consisting of compiled sections of executable code with a plurality of static functions in different order, the insertion of junk functions into executable code, an absence of text tags to system function calls, serialized executable file names, serialized data file headers, virus checking upon execution of the computer readable form for viruses that are known to interact with the computer readable form, and means for comparing video memory to the ballot image that is displayed to the voter.

As per claims 20 and 48.

Challener '793 discloses:

authenticating a voter in association with the ballot viewer object; Col. 7, lines 38-67.

creating a cast vote record by voter interaction with the official ballot image; Col. 8, lines 10-52.

and transmitting the cast vote record to an election server. Col. 8, lines 9-20.
54.

A reference is to be considered not only for what it expressly states, but also for what it would reasonably have suggested to one of ordinary skill in the art. *In re DeLisle*, 160 USPQ 806 (CCPA 1969). Challener teaches utilizing said authentication server to issue a blank ballot to said voter in the form of an encrypted electronic communication. Challener does not address the decrypting of the electronic communication but does show that the ballot contains at least the voter's private key, and voter ID.

Challener teaches all of the elements claimed with the exception of decrypting of the electronic communication but does show that the ballot contains at least the voter's private key, and voter ID.

The examiner takes Official Notice that the voter must, by design, authenticate themselves on their own computer by providing the key necessary to decrypt the encrypted communication. It would have been obvious to one having ordinary skill in the art at the time of the invention to have included the step of authenticating the voter being performed after the step of downloading the ballot and before the step of

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transmitting the cast vote record by executing voter authentication code from the ballot viewer object and authenticating the voter without interacting with the server after the step of downloading the ballot viewer object by requiring them to provide the key to decrypt the communication after it appeared on their screen because the skilled artisan would have recognized that this business practice of requiring recipient authentication before a document is opened is well known and is clearly applicable to the present application.

Challener '793 discloses the claimed invention except for the specific detail of downloading the ballot viewer object and displaying an official ballot image derived from the ballot viewer object. Challener '793 does disclose sending an encrypted ballot to the voter's personal computer and the voter completing the ballot. Col. 8, lines 5-12.

McClure '548 teaches that it is known in the art to provide a display code configured for use in displaying the official ballot image to the voter. Col. 37, lines 1-30. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the encrypted ballot of Challener '793 with the display code configured for use in displaying the official ballot image to the voter of McClure '548, in order to clarify the method of presenting the ballot to the voter.

As per claims 21 and 49.

Challener "793 further discloses the claimed invention, as discussed above, except for the step of downloading the ballot viewer as an email attachment.

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It would have been an obvious matter of design choice to modify the teachings of Challenger "793 to provide the step of downloading the ballot viewer as an email attachment.

Since the applicant has not disclosed that wherein the step of downloading the ballot viewer object as an email attachment, solves any stated problem in a new or unexpected way or is for any particular purpose which is unobvious to one of ordinary skill and it appears that the claimed feature does not distinguish the invention over similar features in the prior art since, the teachings of Challenger "793 will perform the invention as claimed by the applicant with any means, method, or product to wherein the step of downloading the ballot viewer object includes downloading the ballot viewer object as an email attachment.

As per claims 22 and 50.

Challenger "793 further discloses:

a step of storing the ballot viewer object on a server that is accessible from the Internet. Fig. 1C

As per claims 23 and 51.

Challenger '793 discloses the claimed invention except for a step of notifying a voter that the downloadable ballot viewer object has been stored on the server and is available for download prior to the downloading step.

McClure '548 teaches that it is known in the art to provide a step of notifying a voter that the downloadable ballot viewer object has been stored on the server and is

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available for download prior to the downloading step. Col. 36, lines 58-67, Col. 37, lines 1-25.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the program of Challenger '793 with the step of notifying the voter that the downloadable ballot viewer is available as per McClure "548 in order for the voter to be prepared to receive the program required to download the ballot viewer program.

As per claims 24 and 53.

Challenger '793 further discloses the claimed invention, as discussed above, except for the step of charging a transactional fee for at least one of the downloading and transmitting steps.

It would have been an obvious matter of design choice to modify the teachings of Challenger '793 to provide the step of charging a transactional fee for at least one of the downloading and transmitting steps.

Since the applicant has not disclosed that charging a transactional fee for at least one of the downloading and transmitting steps, solves any stated problem in a new or unexpected way or is for any particular purpose which is unobvious to one of ordinary skill and it appears that the claimed feature does not distinguish the invention over similar features in the prior art since, the teachings of Challenger '793 will perform the invention as claimed by the applicant with any means, method, or product to charging a transactional fee for at least one of the downloading and transmitting steps.

As per claims 25 and 53.

Challener '793 discloses the claimed invention, as discussed above, except for the step of downloading the ballot viewer object includes downloading the ballot viewer object through use of an official service of the United States Postal Service. However, Challener '793 does show the use of servers tied together via Local Area Networks or the Internet. Fig. 1C.

Challener "793 further discloses the concept of utilizing remote servers to provide the service for the system. The organization that provides the service does not make the service or concept unique or original. One of the reasons for not giving limitation weight to which the entity is that is providing the service, i.e. AOL, Prodigy, CompUServe, etc. is that the entity may not be available or viable in the future.

It would have been an obvious matter of design choice to modify the teachings of Challener '793 to provide the step of downloading the ballot viewer object through the use of an official service of the United States Postal Service.

Since the applicant has not disclosed that step of downloading the ballot viewer object through use of an official service of the United States Postal Service, solves any stated problem in a new or unexpected way or is for any particular purpose which is unobvious to one of ordinary skill and it appears that the claimed feature does not distinguish the invention over similar features in the prior art since, the teachings of Challener '793 will perform the invention as claimed by the applicant with any means, method, or product to downloading the ballot viewer object through use of an official service of the United States Postal Service or ant other Internet provider.

As per claims 26 and 54.

Challener '793 further discloses:

wherein the step of downloading the ballot viewer object includes downloading through the use of a secure transmission protocol. Col. 4, lines 1-15.

As per claims 27 and 55.

Challener '793 further discloses:

wherein the step of downloading the ballot viewer object includes a step of confirming a voter by password prior to commencing the downloading step. Col. 7, lines 36-67, Col. 8, lines 1-10.

As per claims 28 and 56.

Challener '793 further discloses:

wherein the step of downloading the ballot viewer object includes encrypting the ballot viewer object. Col. 7, lines 36-67, Col. 8, lines 1-10.

As per claims 29 and 57.

Challener '793 discloses:

wherein the step of authenticating the voter includes comparing the voter authentication information with interactive input provided by a voter. Col. 7, lines 36-67, Col. 8, lines 1-10.

As per claims 30 and 58.

Challener '793 discloses the claimed invention, as discussed above, except for the step of wherein the voter authentication information contained in the ballot viewer object is hashed and the step of authenticating the voter includes hashing the interactive input from the voter for comparison purposes.

However, Challener '793 references methods of authentication for data and Bruce Schneier, "Applied Cryptography" ISBN 0-471-59756-2.

Challener "793 and McClure "548 teaches all of the elements claimed with the exception of wherein the voter authentication information contained in the ballot viewer object is hashed and the step of authenticating the voter includes hashing the interactive input from the voter for comparison purposes.

The examiner takes Official Notice that wherein the voter authentication information contained in the ballot viewer object is hashed and the step of authenticating the voter includes hashing the interactive input from the voter for comparison purposes is well known.

It would have been obvious to one having ordinary skill in the art at the time of the invention, to have included the step of hashing the voter authentication information because the skilled artisan would have recognized that this business practice of hashing information to provide authentication of the data is clearly applicable to wherein the voter authentication information contained in the ballot viewer object is hashed and the step of authenticating the voter includes hashing the interactive input from the voter for comparison purposes. These advantages are well known to those skilled in the art.

As per claims 31 and 59.

Challener "793 discloses the claimed invention except for the wherein the step of displaying the official ballot image includes displaying an electronic replica of an absentee paper ballot that a voter would receive in an election.

McClure '548 teaches that it is known in the art to provide the step of displaying the official ballot image includes displaying an electronic replica of an absentee paper ballot that a voter would receive in an election. Col. 34, lines 59-67.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the electronic voting of Challener "793 with the wherein the step of displaying the official ballot image includes displaying an electronic replica of an absentee paper ballot that a voter would receive in an election of McClure '548, in order to permit the voter to use an Absentee Ballot.

As per claims 32 and 60.

Challener "793 further discloses:

a step of encrypting the cast vote record prior to the transmitting step. Col. 8, lines 10-15.

As per claims 33 and 61.

Challener '793 further discloses:

the claimed invention except for a step of deleting the ballot viewer object and cast vote record from a voter's computer once the transmitting step is complete.

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McClure '548 teaches that it is known in the art to include a step of deleting the ballot viewer object and cast vote record from a voter's computer once the transmitting step is complete. Col. 37, lines 35-40.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate into Challenger ' 793 system a step of deleting the ballot viewer object and cast vote record from a voter's computer once the transmitting step is complete as taught by McClure '548, in order to clear the voter's system of the operating program.

As per claims 34 and 62.

Challener "793 further discloses:

a step of sending an email confirmation message to the voter upon receipt of the cast vote record transmitted by the voter. Col. 10, lines 25-35.

As per claims 35 and 63.

Challener "793 further discloses:

a step of replicating the voter's cast vote record in the email confirmation message. Col. 10, lines 25-35.

As per claims 36 and 64.

Challener "793 further discloses:

a step of creating the ballot viewer object to have a unique combination of voter authorization information and official ballot image information assigned to a particular voter. Col. 10, lines 25-35.

As per claims 37 and 65.

Challener "793 further discloses:

wherein the official ballot image information includes selecting contests for presentation in the official ballot image according to contests in which the voter is authorized to vote. Col. 3, lines 9-67.

As per claims 38 and 66 .

Challener '793 discloses the claimed invention, as discussed above, except for the step of wherein the transmitting step is performed using an official server that is authorized by the United States Postal Service. However, Challener '793 does show the use of servers tied together via Local Area Networks or the Internet. Fig. 1C.

Challener "793 further discloses the concept of utilizing remote servers to provide the service for the system. The organization that provides the service does not make the service or concept unique or original. One of the reasons for not giving limitation weight to which the entity is that is providing the service, i.e. AOL, Prodigy, CompUServe, etc. is that the entity may not be available or viable in the future.

It would have been an obvious matter of design choice to modify the teachings of Challenger '793 to provide the step of wherein the transmitting step is performed using an official server that is authorized by the United States Postal Service.

Since the applicant has not disclosed that step of wherein the transmitting step is performed using an official server that is authorized by the United States Postal Service, solves any stated problem in a new or unexpected way or is for any particular purpose which is unobvious to one of ordinary skill and it appears that the claimed feature does not distinguish the invention over similar features in the prior art since, the teachings of Challenger '793 will perform the invention as claimed by the applicant with any means, method, or product to wherein the transmitting step is performed using an official server that is authorized by the United States Postal Service

As per claims 39 and 67.

Challener "793 further discloses:

wherein the transmitting step is performed using encryption of the cast vote record. Col. 8, lines 1-67.

As per claims 40 and 68.

Challener "793 further discloses:

wherein at least one of the downloading and transmitting steps is accomplished through use of the Internet. Fig. 1C.

As per claims 41 and 69.

Challener '793 discloses the claimed invention except for the step of resolving problems that arise as a result of transmitting messages through use of the Internet.

McClure '548 teaches that it is known in the art to provide a step of resolving problems that arise as a result of transmitting messages through use of the Internet. Col. 12, lines 65-67, Col. 13, lines 1-67.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the system of Challener '793 with the a step of resolving problems that arise as a result of transmitting messages through use of the Internet by McClure '548, in order to detect and correct any problems arising through the use of the Internet to insure that the voter is represented.

As per claims 42 and 70.

Challener '793 discloses the claimed invention except for the step of resolving problems includes parsing the cast vote record to identify corrupted ballot information.

McClure '548 teaches that it is known in the art to provide a step of resolving problems through the use of error detection and correction (EDC) methodologies that can include parsing the cast vote record to identify corrupted ballot information. Col. 12, lines 65-67, Col. 13, lines 1-67.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the system of Challener '793 with the a step of resolving problems through the use of error detection and correction (EDC) methodologies by

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McClure '548 that can include parsing the cast vote record to identify corrupted ballot information, in order to detect and correct any problems arising from corrupt ballot information.

As per claims 43 and 71.

Challener '793 further discloses:

wherein the step of resolving problems includes preventing a single voter from casting multiple ballots. Col. 7, lines 15-20.

As per claims 44 and 72.

Challener '793 discloses the claimed invention except for the step of resolving problems includes notifying the voter that an ballot viewer object has been downloaded but the transmitting step has not been completed within a predetermined amount of time since the downloading step occurred.

McClure '548 teaches that it is known in the art to provide a step of resolving problems through the use of error detection and correction (EDC) methodologies that can include the step of resolving problems includes notifying the voter that an ballot viewer object has been downloaded but the transmitting step has not been completed within a predetermined amount of time since the downloading step occurred. Col. 12, lines 65-67, Col. 13, lines 1-67.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the system of Challener '793 with the a step of resolving

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problems through the use of error detection and correction (EDC) methodologies by McClure '548 that can include the step of resolving problems includes notifying the voter that an ballot viewer object has been downloaded but the transmitting step has not been completed within a predetermined amount of time since the downloading step occurred.

As per claims 45 and 73.

Challener '793 discloses the claimed invention except for the step of resolving problems includes facilitating a subsequent download in the event of a download failure upon an initial attempt at performing the download step.

McClure '548 teaches that it is known in the art to provide a step of resolving problems through the use of error detection and correction (EDC) methodologies that can include the step of resolving problems facilitating a subsequent download in the event of a download failure upon an initial attempt at performing the download step. Col. 12, lines 65-67, Col. 13, lines 1-67.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the system of Challener '793 with the a step of resolving problems through the use of error detection and correction (EDC) methodologies by McClure '548 that that can include the step of resolving problems facilitating a subsequent download in the event of a download failure upon an initial attempt at performing the download step.

As per claims 46 and 74.

Challener '793 discloses the claimed invention, as discussed above, except for the step of protecting against virus attack.

It would have been an obvious matter of design choice to modify the teachings of Challener '793 to provide the step of protecting against virus attack.

As pointed out by the article of SYMANTEC, AntiVirus Research Center, Computer Viruses – An Executive Brief, @1998 Symantec Corporation the use of anti-virus programs is well known in the art and would have been obvious to a person in the art at the time the invention was made to protect against a virus to prevent a virus from destroying or shutting their system down.

Since the applicant has not disclosed that protecting against a virus solves any stated problem in a new or unexpected way or is for any particular purpose which is unobvious to one of ordinary skill and it appears that the claimed feature does not distinguish the invention over similar features in the prior art since, the teachings of Challener '793 will perform the invention as claimed by the applicant.

As per claims 47 and 75.

Challener '793 discloses the claimed invention, as discussed above, except for wherein the protecting step includes creating the ballot viewer object by compiling sections of executable code with a plurality of static functions in different order, inserting junk functions into executable code, avoiding use of text tags to system function calls, using serialized executable file names, using serialized data file headers, checking upon

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execution of the computer readable form for viruses that are known to interact with the computer readable form, and comparing video memory to ballot selections that the voter has made.

It would have been an obvious matter of design choice to modify the teachings of Challenger '793 to provide the step of wherein the protecting step includes creating the ballot viewer object by compiling sections of executable code with a plurality of static functions in different order, inserting junk functions into executable code, avoiding use of text tags to system function calls, using serialized executable file names, using serialized data file headers, checking upon execution of the computer readable form for viruses that are known to interact with the computer readable form, and comparing video memory to ballot selections that the voter has made.

As pointed out by the article of SYMANTEC, AntiVirus Research Center, Computer Viruses – An Executive Brief, @1998 Symantec Corporation, pgs. 9-12, generic type viruses are well known with methods to prevent and/or remove them. Therefore, various anti-virus programs are available and well known in the art and would have been obvious to a person in the art at the time the invention was made incorporate a protecting step that includes creating the ballot viewer object by compiling sections of executable code with a plurality of static functions in different order, inserting junk functions into executable code, avoiding use of text tags to system function calls, using serialized executable file names, using serialized data file headers, checking upon execution of the computer readable form for viruses that are known to interact with the

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computer readable form, and comparing video memory to ballot selections that the voter has made.

Since the applicant has not disclosed that the protecting step includes creating the ballot viewer object by compiling sections of executable code with a plurality of static functions in different order, inserting junk functions into executable code, avoiding use of text tags to system function calls, using serialized executable file names, using serialized data file headers, checking upon execution of the computer readable form for viruses that are known to interact with the computer readable form, and comparing video memory to ballot selections that the voter has made, solves any stated problem in a new or unexpected way or is for any particular purpose which is unobvious to one of ordinary skill and it appears that the claimed feature does not distinguish the invention over similar features in the prior art since, the teachings of Challener '793 will perform the invention as claimed with any means, method or product to wherein the protecting step includes creating the ballot viewer object by compiling sections of executable code with a plurality of static functions in different order, inserting junk functions into executable code, avoiding use of text tags to system function calls, using serialized executable file names, using serialized data file headers, checking upon execution of the computer readable form for viruses that are known to interact with the computer readable form, and comparing video memory to ballot selections that the voter has made.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 76 and 77 are rejected under 35 U.S.C. 102(b) as being anticipated by Willard U.S. 5,764,221. [Willard '221]

As per claim 76:

Willard '221 discloses:

In an official postal server authorized by a national government agency for the transmission of electronic data, the improvement comprising an interface for batch control processing of electronic ballot information as directed by an election server. Col. 8, lines 65-67, Col. 9, lines 1-15.

Examiner's Note: Examiner has cited particular columns and line numbers in the references as applied to the claims below for the convenience of the applicant.

Although the specified citations are representative of the teachings in the art and are applied to the specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested from the applicant, in preparing the responses, to fully consider the references in entirety as potentially teaching all or part

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of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the examiner.

Conclusion

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

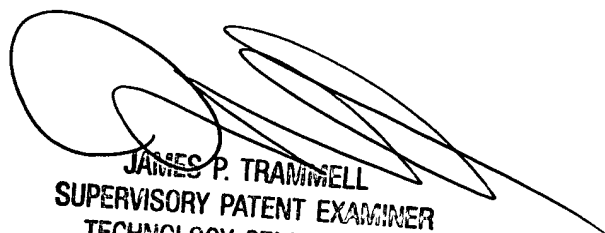
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel L. Greene whose telephone number is 703-306-5539. The examiner can normally be reached on M-Thur. 8am-6pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James P. Trammell can be reached on 703-305-9768. The fax phone number for the organization where this application or proceeding is assigned is 703-305-7687.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.

11/13/03

DLG



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